

Focused Session on Stormwater Retention Credit Trading - Summary of Discussion
District's Proposed Rulemaking on Stormwater Management and Soil Erosion and Sediment
Control and Draft Stormwater Management Guidebook
---Conference Call---

Date: November 2, 2012

Attendees:

Daniel Arking – Holland and Knight
Charles Barber – George Washington University
Blaine Carter – PGP Development
George Clark – Atkins
Cary Coppock – USDA Agricultural Research Service
Jon Devine – Natural Resources Defense Council
Becky Hammer – Natural Resources Defense Council
Cary Kadlecek – Goulston & Storrs
Glynn Rountree – National Association of Home Builders
Jeremy Reiderman – Atkins

On behalf of DDOE:
Brian Van Wye

Question: Would the rule allow for a scenario where Stormwater Retention Credit (SRC) trading occurs with two properties, both owned by the same entity, in addition to a scenario where two different owners trade SRCs?

DDOE: Yes, under the rule, both of those scenarios would be allowed, as well other possible scenarios where a regulated site could purchase SRCs from multiple sites or from an SRC aggregator.

Question: Would an SRC-generating site have to be located in the District?

DDOE: Yes.

Question: What does DDOE expect the size of the market to be, in terms of the number of SRCs being traded and number of sellers and buyers?

DDOE: That is difficult to estimate. From the SRC demand side, developers are still reviewing the Proposed Rule and Draft Stormwater Management Guidebook, and the extent to which they expect to opt for off-site retention and use of SRCs is not clear yet. From the SRC supply side, DDOE expects that there will be numerous sites in the District that can retrofit to generate SRCs at lower cost than DDOE's in-lieu fee. Also, DDOE plans to certify SRCs for sites with existing retention capacity that meets the eligibility requirements and was installed after May 1, 2009 – these sites would already have incurred the capital cost for constructing retention capacity and would have relatively low barriers to generating SRCs.

Question: What would the costs be for sites to come in and out of the market?

DDOE: DDOE has worked to maximize the flexibility for sites to enter and exit the market.

From a regulated site's perspective, the site would be able to use SRCs to meet its Off-Site Retention Volume (OSRv) for some number of years and then switch to using in-lieu fee, or vice versa. The regulated site would also have the option of retrofitting in the future to increase on-site retention and thereby decrease or eliminate its OSRv.

From the perspective of an SRC-generating site, the site would not be permanently encumbered with the obligation to maintain its retention capacity; instead, it will only have to maintain that capacity for the time period for which it has requested SRC certification, up to three years at a time. If an SRC-generating site decides to redevelop before the time period of SRC certification has ended, the site would be able to compensate for its failure to maintain the retention capacity by purchasing replacement SRCs for DDOE to retire or paying the corresponding amount of in-lieu fee.

DDOE has also tried to reduce transaction costs for sites to participate in SRC trading. This includes DDOE's lower plan review fees for SRC-generating projects, as compared to plan review fees for regulated sites. DDOE is also interested in the development of template SRC-trading contracts, so that these don't have to be re-created by each market participant.

Question: Would existing sites with natural cover be eligible for SRC certification?

DDOE: Generally no. However, if the natural cover was installed after May 1, 2009 as a conversion of compacted or impervious cover, then it may be eligible.

Question: Does DDOE expect that SRCs will be available when the rule takes effect?

DDOE: Since existing retention capacity will be eligible for SRC certification and may apply upon finalization of the rule (i.e. before the effective date of rule), DDOE expects that SRCs will be available. Also, keep in mind that a regulated site would not need to have SRCs at the point when it is obtaining DDOE approval of a Stormwater Management Plan (SWMP); instead the site would need to have SRCs before it schedules its final construction inspection with DDOE. A regulated site would have to begin using SRCs or in-lieu fee to meet its OSRv as of the date of its successful completion of DDOE's final construction inspection.

DDOE is also considering the possibility of purchasing SRCs itself in order to create demand certainty for SRC-generating sites. DDOE's intent in this would be to provide a fall-back option for SRC-generating sites while avoiding driving up the price of SRCs.

Question: Would green space on National Park Service (NPS) land be eligible for SRC certification?

DDOE: Existing green space (natural cover or compacted cover) on NPS land would generally not be eligible. However, that existing space may provide great opportunities for installing retention capacity to retain stormwater from nearby impervious or compacted surfaces.

Question: Could NPS use its open space to install retention capacity that would receive runoff from an adjacent property in order to generate SRCs?

DDOE: Yes, the rule would allow that. The adjacent property owner and NPS would negotiate the terms of the arrangement, including who would own the SRCs, and then would apply to DDOE for SRC certification.

Question: What will the relationship be between SRCs and the discount on stormwater impervious fees?

DDOE: Retention capacity installed to generate SRCs would also be eligible to earn a discount on DDOE's stormwater fee. In other words, the discount is another layer of incentive for property owners to voluntarily retrofit to install additional retention capacity. In a scenario where an SRC aggregator installs retention capacity on another person's property, this layered incentive may provide a convenient way to share the financial benefits deriving from that retention capacity. For example, an aggregator and a property owner could make an arrangement where the aggregator installs and maintains retention capacity on a property, with the aggregator receiving the SRCs and the property owner receiving the discount on DDOE's stormwater fee.

To elaborate, there are two impervious-based fees in the District. Both are assessed on a property's water bill. One – the Stormwater Fee – goes to DDOE to support the administration and implementation of the District's Municipal Separate Storm Sewer System (MS4) Permit. The other – the Impervious Area Charge (IAC) – goes to DC Water to support the implementation of the Long Term Control Plan to resolve the District's Combined Sewer Overflow (CSO) problem.

DDOE has proposed a rule to allow a discount on its Stormwater Fee – up to a maximum of 55% for retention capacity that retains the 1.2 inch storm on a property. DC Water is planning to conduct its own rulemaking process to establish a discount on the IAC. DDOE expects that DC Water will undertake that process in the next year and that the maximum discount available for the IAC will be less than the 55% maximum discount on DDOE's Stormwater Fee. DDOE's understanding is that DC Water will use DDOE's BMP technical specifications and process for determining how much retention is achieved by retention capacity and that applicants will apply through DDOE for the discount on both fees.

Question: Will there be a limit on the maximum amount of SRCs that retention capacity can generate?

DDOE: DDOE will not certify SRCs for retention capacity above the 1.7 inch SRC ceiling, meaning the volume from a 1.7 inch storm draining into the retention capacity. This is important to ensure that SRCs are providing a comparable benefit to waterbodies as would be provided if a regulated site achieved its entire retention obligation on site. For example, if a property installed

retention capacity to hold a 7 inch storm, roughly the 15-year statistical storm, that capacity would rarely be filled to its maximum capacity. Put differently, there are diminishing benefits from retention capacity as the size of the storm that it is designed to retain increases.

Question: Will SRCs expire?

DDOE: No. They can be banked indefinitely. The one-year lifespan of an SRC begins when it is applied to an OSRv.

Question: How much existing retention capacity does DDOE think will be eligible for SRC certification? Knowing this would help to understand how many SRCs will be available when the rule takes effect.

DDOE: We have considered this in the past and think there should be a significant amount but not enough to flood the marketplace. DDOE can look again at this question to give a more specific answer.

Comment: It would also be helpful to have some sense of how much demand there might be from regulated sites. This would help to give stakeholders a better sense of the potential size of the SRC market.

DDOE: As discussed earlier, we may have a better sense of SRC demand after getting feedback from the regulated community about the extent to which they expect to opt for off-site retention. Having said that, we can make some projections based on some rough assumptions and share those projections and assumptions.

Comment: DDOE has made a great start in building flexibility into the proposed rule, especially with its provisions for off-site retention and SRC trading. The remaining challenges faced by DDOE's program seem to be considerably less than those faced by the Bay-wide nutrient trading program that is currently being considered. DDOE's program has a great deal of potential, both in the District and for replication in other jurisdictions. One of the benefits for a developer is that it allows the costs of stormwater management to be spread out over time, over future owners, rather than incurring the entire cost of stormwater management up front.

DDOE: Differences between the District's situation and the Bay-wide context present opportunities to structure things differently, and DDOE has tried to take advantage of these opportunities to develop a program that will provide meaningful flexibility for regulated sites while also providing benefits for District waterbodies that are as good or better than would otherwise be achieved under strict on-site retention.

Question: Does DDOE see a role for SRC aggregators in the District and does DDOE have any sense of the interest from potential aggregators?

DDOE: Yes, DDOE does see a potential opportunity for SRC aggregators and has structured the rule and planned program to allow for that. DDOE has heard from firms who are interested in

playing that role, including some who have participated in other mitigation or environmental credit markets.

Question: How will DDOE handle situations where SRC-generating sites transfer ownership?

DDOE: The rule allows an SRC-generating site to get out of its maintenance obligation for a time period of SRC certification by compensating for the retention that it had previously committed to achieve. If the site had not already sold the SRCs, it could forfeit the appropriate number of SRCs, and DDOE would retire them. If the SRCs had already been sold or used, they could purchase replacement SRCs for DDOE to retire or pay the appropriate amount of in-lieu fee.

For example, assume a site has a 1,000 gallon bioretention for which DDOE has certified three years of SRCs or 3,000 SRCs. The original SRC owner who applied for certification of SRCs would have committed to maintaining the retention capacity before DDOE would certify those SRCs. In this example, we assume the site owner is the original SRC owner. After the second year, the site owner, who has already sold all the SRCs, decides to sell the site to be redeveloped. The owner of the site should ensure that the retention capacity will be maintained for the remaining time period or purchase 1,000 SRCs to forfeit to DDOE to discharge its obligation. Alternatively, the site owner could make an in-lieu fee payment to DDOE for 1,000 gallons of retention for 1 year. If the site owner neither ensures that the retention capacity will be maintained nor compensates with replacement SRCs or in-lieu fee, then DDOE will charge the appropriate in-lieu fee amount to the owner.

Comment: It may be helpful for those entering real estate transactions to be able to check a DDOE database to find out if retention capacity on the site has SRCs certified for it.

DDOE: DDOE should be able to provide this information, either on line or by providing a phone number that a real estate buyer could call.